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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 001427

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SUBJECT: IPR CHANGES FOR PHARMACEUTICALS

Classified By: Economic Counselor Darnall Steuart for reasons 1.4 (b) and (d).

11. (C) Summary. On September 12, the Bolivarian Republic of Venezuela (BRV) agency responsible for intellectual property protection issued a press release resurrecting the Industrial Property Law of 1955, which expressly prohibits intellectual property rights for pharmaceuticals and other products. The IPR community has filed a request with the Venezuelan Supreme Court, seeking annulment of the action. The return to the 1955 law codifies the BRV's de facto policy of refusal to issue patents, particularly in the area of medicines. End Summary.

A PRESS RELEASE THAT LEGISLATES IPR LAW

12. (SBU) On September 12, the Autonomous Service of Intellectual Property (Servicio Autonomo de Propriedad Industrial (SAPI)), the BRV agency responsible for the issuance of patents and protection of intellectual property rights, resurrected the Ley de Propriedad Industrial de 1955 (the 1955 law). The 1955 law states that drinks, foodstuffs, drugs of any kind and other chemical reactions and combinations may not be patented. Until April 2006, Venezuela was member of the Andean Community and had incorporated Decision 486 (the Common Intellectual Property Regime) into its laws. Although Venezuela exited the Andean Community, a majority of legal scholars held that the Andean Pact decisions had become part of Venezuelan law and could only be changed by new legislation. With the September 12 press release, SAPI has reverted to 50 year plus old legislation covering intellectual property rights.

13. (SBU) In response to the SAPI release, the Venezuelan Association of Intellectual Property Agents (Colegio Venezolano de Agentes de la Propriedad Industrial (COVAPI)) filed a request with the Tribunal Supremo de Justicia (Supreme Court of Venezuela) to annul the SAPI action, arguing that SAPI had exceeded its powers and that such a change can only be made by the National Assembly through the enactment of a new law. Local IPR experts have told the press that a return to the 1955 law would put Venezuela at odds with its obligations to the World Trade Organization, the Paris Convention for the Protection of Industrial Property as well as Mercosur standards. The Venezuela Chamber of Medicines (Camara Venezolana de Medicamento (CAVEME)) has also said that a return to the 1955 law would allow for pirating of foreign patents and goods. According to press reports, a CAVEME official asserted that the decision by SAPI is a move to codify SAPI's failure to issue patents.

A LOCAL IPR ATTORNEY PROVIDES BACKGROUND

¶4. (C) On October 3, EmbOffs met with Dianne Phoebus (strictly protect throughout), a local intellectual property rights attorney at Baker & McKenzie. Phoebus said that the impact of the decision to revert to the 1955 law remains unclear, adding that the SAPI website still cites TRIPs and the Paris Convention as part of its current legal framework. The IPR attorneys at Baker & McKenzie have seen recent movement towards the application of the 1955 law in processing patent and trademark requests for pharmaceuticals. Phoebus noted that SAPI has not issued a pharmaceutical patent in four or five years.

¶5. (C) Phoebus stated the catalyst for recent changes may be Eduardo Saman, the former head of SAPI who now leads Venezuela's consumer protection agency, the Institute for the Defense of People's Access to Goods and Services (Indepabis.) A pharmacist by training, she said, Saman is an ultra-left ideologue with powerful connections, probably including a direct link to Chavez. Despite working at Indepabis, Saman still seems to control SAPI. According to Phoebus, Cuban consultants in SAPI are "horrified" by the treatment of patents and trademarks in Venezuela, as Cuba supports intellectual property rights (except for drugs.)

¶6. (C) Phoebus added that so far the Venezuelan pharmaceutical community has been quiet on the resurrection of the 1955 law. Venezuela has not, she said, been a jurisdiction where companies have tried to patent products. Many companies work in the Venezuelan market through their Brazilian or Argentine subsidiaries, which have been making handsome profits and receiving good access to preferential

CARACAS 00001427 002 OF 002

dollars through CADIVI. Phoebus speculated that the pharmaceutical companies will simply swallow the decision to keep the money rolling in from BRV Ministry of Health purchases of vaccines, insulin and other products.

IMPACT ON AMERICAN COMPANIES OPERATING IN VENEZUELA

¶7. (C) Post reached out to several American pharmaceutical companies operating in Venezuela. (Note: Not one of the six American companies manufacture products in Venezuela.) Francisco Piccolo (strictly protect throughout), General Manager of Baxter operations in Venezuela, stated that although the company is evaluating the decision, it is not too concerned. Piccolo confirmed that SAPI has not issued a patent for medicines in five years. This decision will not impact American pharmaceutical companies, he said, because they are already operating in an environment without patent or intellectual property rights protection.

COMMENT

¶8. (SBU) Post does not anticipate a quick response by the Supreme Court to the COVAPI request for annulment of the SAPI decision to return to the 1955 law. As seen in the recent past, the Court's decisions routinely support the government. American pharmaceutical companies operating in Venezuela continue business under the status quo of non-existent patent and IPR protection. End Comment.
CAULFIELD